COMPLIANCE BOARD OPINION NO. 98-2

April 1, 1998

Mr. Kye Parsons
The Salisbury News & Advertiser

The Open Meetings Compliance Board has considered two complaints, both dated August 2, 1997, in which you allege violations of the Maryland Open Meetings Act by the Salisbury City Council and the Wicomico County Council. One of the complaints concerns closed meetings between the two councils at the Wicomico County Tourism Center on July 9 and August 13, 1996. The other concerns a series of closed meetings on unspecified dates of an entity called the Government Consolidation Joint Committee, consisting of two members of each council.

The Compliance Board has reviewed the written submissions on these complaints and considered the presentations at an informal conference held on March 2, 1998. For the reasons set forth below, the Compliance Board concludes as follows:

1. The City and County Councils conducted public business in violation of the Act at a meeting on August 13, 1996. There is no evidence of a violation at the earlier meeting on July 9, 1996.

2. The Open Meetings Act was inapplicable to the Government Consolidation Joint Committee. Therefore, the committee's closed meetings did not violate the Act.

I

The Meetings of the Council

A. Complaint and Responses

The gist of your first complaint is that on July 9 and August 13, 1996, the Salisbury City Council and the Wicomico County Council held closed meetings in the Tourism Center at which consolidation of the two governments was the topic. According to your complaint, neither council posted a notice or otherwise notified the public of the meetings. Further, minutes of the meetings were not kept.

On behalf of the City Council, City Attorney Robert A. Eaton stated that the meetings held on July 9 and August 13 were luncheons, a type of social gathering not subject to the Open Meetings Act. Mr. Eaton acknowledged that "[a]pparently at some point, there was an informal decision to put together a committee of four individuals, two from each Council, to explore the feasibility of consolidation." While there was some discussion of matters of mutual interest, Mr. Eaton continued, the City Council did not engage in any phase of its own decision making process, and the luncheons were not intended to circumvent the Open Meetings Act.

On behalf of the Wicomico County Council, County Attorney Edgar A. Baker, Jr., confirmed that the County Council met with the City Council in a social setting on the dates in question. The overall purpose, according to Mr. Baker, was "[t]o further the lines of communication" between the two councils. More specifically, Mr. Baker stated that "[i]t does appear that in the course of general conversation discussion occurred concerning the importance of continuing cooperative efforts between the two councils with respect to the day to day operations of government as well as discussion concerning consolidation."

Participants in the Compliance Board's informal conference provided both confirmation about the overall purpose of the two luncheons and more detail about the content of the discussion, particularly at the second meeting. The President of the County Council, Philip L. Tilghman, characterized the two gatherings as "get-to-know sessions," although he acknowledged that the subject of consolidation did arise. The President of the City Council, Carolyn S. Hall, described the two luncheons as "social in nature," affording the respective council members a "chance to get acquainted." Ms. Hall stated that, at the July 9 meeting, there was no discussion of consolidation. At the August 13 meeting, however, a member of the County Council, Victor H. Laws, raised the issue of consolidation and briefly presented a proposal by which the issue could be explored in detail. Ms. Hall characterized this discussion as essentially a presentation by Mr. Laws, along with "very preliminary" discussion by the two councils. The discussion did not involve a consideration of the merits of consolidation, Ms. Hall continued, and certainly involved no decisions except to create a mechanism for information-gathering about, and analysis of, the topic. Mr. Laws stated that the discussion of his proposal was "very brief" and that no one expected any action to be taken then.

B. Meetings and Social Occasions – General Principles

The Open Meetings Act applies to a "meeting" held by a public body. A public body "meets" when it "convene[s] ... for the consideration or transaction of public business." §10-502(g) of the State Government Article. The fact that a quorum of members of a public

body is present does not necessarily make a gathering a "meeting" subject to the Act. *See Ajamian v. Montgomery County*, 99 Md. App. 665, 639 A.2d 157, *cert. denied*, 334 Md. 631, 640 A.2d 1132 (1994). In particular, the Act does not apply to "a chance encounter, social gathering, or other occasion that is not intended to circumvent [the Act]." §10-503(a)(2). *See* Compliance Board Opinion 94-6 (August 16, 1994).

The Compliance Board recognizes the frequent, and entirely permissible, practice of public bodies to gather socially, so as to make working relations among the members more cordial. *See Kansas City Star Co. v. Fulson*, 859 S.W.2d 934, 940 (Mo. App. 1993) (activities to improve the personal relations of individuals who serve together on a public governmental body, if limited to social interaction, are not matters of public business). The Compliance Board also recognizes that members who are socializing often make stray comments relating to public business; after all, the common link among the group is membership on the particular public body. Indeed, it would be unrealistic to believe that such an occasion must be altogether free of passing references to the work of the body.

A public body, however, may not escape its obligations under the Act by terming a meeting a "social gathering." Social gatherings may not be used "as a device to script discussion at the following meeting, to set the agenda for discussion, or to discuss the merits of any matter that is to be dealt with at the meeting proper." Compliance Board Opinion 94-6, at 4. As the Court of Appeals has held, "The Act makes no distinction between formal and informal meetings of a public body; it simply covers all meetings at which a quorum of the constituent membership of the public body is convened for the purpose of considering or transacting public business." *City of New Carrollton v. Rogers*, 287 Md. 56, 72, 410 A.2d 1070 (1980).

The Open Meetings Act does not define the term "public business." In the St. Mary's County Open Meetings Act, the General Assembly defined "public business" as "all matters within the jurisdiction of a public agency which are before an agency for official action or which reasonably, foreseeably may come before that agency in the future." Article 24, §4-202(d) of the Maryland Code. This definition reflects the usual understanding of the term. In one case, a Missouri appellate court described the "public business" as encompassing "those matters over which the public governmental body has supervision, control, jurisdiction or advisory power." *Kansas City Star Co. v. Fulson*, 859 S.W.2d at 940. These are matters, as another court put it, that affect the public and "would eventually obtain substance in official form." *Hill v. Planning Board of the Town of Amherst*, 529 N.Y. S.2d 642, 643 (N.Y. App. Div. 1988). *See also Oneonta Star Division v. Board of Trustees,* 412 N.Y.S.2d 927, 930 (N.Y. App. Div. 1979) (indicating that public business includes matters of public concern).

If a matter is one of "public business," the next question is whether the public body is "considering" or "transacting" that public business. The Court of Appeals has given guidance as to what constitutes the consideration or transaction of public business. "It is the deliberative and decision-making process in its entirety which must be conducted in meetings open to the public since every step of the process, including the final decision itself, constitutes the consideration or transaction of public business." *City of New Carrollton v. Rogers*, 287 Md. at 72. *See also Wesley Chapel Bluemount Ass'n v. Baltimore County*, 347 Md. 125, 138, 699 A.2d 434 (1997). Thus, the phrase "consider or transact public business" contemplates not only the taking of an official vote, but also all of the discussions preceding the vote. *See Orange County Publications v. Council of City of Newburgh*, 401 N.Y.S.2d 84, 89 (N.Y. App. Div.), *aff'd*, 411 N.Y.S.2d 564 (N.Y. 1978) ("transacting public business" includes discussions as well as voting).

To be sure, a public body does not "consider or transact public business" merely because it hears information with some potential connection to the work of the body. For example, if the public body attends a lecture or presentation on the status of the economy of its jurisdiction, the public body is not "considering or transacting" public business. Merely by sitting and listening to this kind of presentation, the members do not have the opportunity for collective discussion or interchange among the quorum. *See Ajamian v. Montgomery County*, 99 Md. App. at 680 (merely attending a meeting of special interest group did not violate Open Meeting Act when council members did not discuss, debate, deliberate, or vote); Compliance Board Opinion No. 94-9 (November 15, 1994) (Open Meetings Act did not apply where participation by members of public body appeared to have been as individuals). Where the public body has the opportunity, however, to explore issues as a group and exchange comments and reactions, the public body is "considering or transacting" public business.

C. Application of Principles to Joint Meetings of the Councils

The Compliance Board has heard no evidence suggesting that the July meeting was anything other than a bona fide social gathering. Therefore, the Open Meetings Act did not apply to it.

In the Compliance Board's view, however what occurred at the luncheon on August 13 involved the "consideration or transaction of public business." The attendees at the luncheon not only listened to a presentation by a County Council member on consolidation but also discussed, even if only briefly, selecting a committee of four individuals to explore the feasibility of consolidation. The topic, consolidation, is one over which the respective councils have supervision, control, and jurisdiction. The item was presented in such a way

that there was an opportunity for interchange among quorums of the two bodies. Thus, the public bodies "considered or transacted" public business at the luncheons.

In short, the August 13 luncheon was an important, albeit preliminary, step in "explor[ing] the feasibility of government consolidation." Letter from President Tilghman to President Hall (September 3, 1996). As President Tilghman pointed out in his letter, consolidation would require "changes ... in our respective legal structures and Charters." Under the Act, any portion of the process leading to the potential amendment of a law is a "legislative function," subject to the Act. §§10-502(f) and 10-503.

Few issues of local government could be of greater consequence to the citizens of the City and County. The Open Meetings Act applied to this discussion and, because the two councils failed to comply with the provisions of the Act regarding notice, openness, and recordkeeping, they violated the Act.

II

The Consolidation Committee's Meetings

The result of the August 13 discussion was the creation of a four-member committee to explore the feasibility of consolidation. The committee consisted of two members each from the City and County Councils. Two fall short of a quorum of either council. Hence, when the Consolidation Committee met, its meetings were not meetings of the City or County Council.

The Open Meetings Act applies only to the meetings of "public bodies," as that term is defined in §10-502(h). The determinative question, therefore, is whether the Consolidation Committee was itself a "public body." If it was, its meetings would generally have been required to have been open.[1]

The Consolidation Committee was not created by ordinance, resolution, or any other of the formal legal means identified in §10-502(h)(1). Instead, it was evidently created by consensus at the August 13 meeting, followed by letters that identified the members representing the respective councils. Moreover, the committee included only government

[1] There can be no doubt that the Consolidation Committee was engaged in an "advisory function" ordinarily subject to the Act. *See* §10-502(b).

officials in its membership; accordingly, the committee was not encompassed by the expanded definition of "public body" in §10-502(h)(2).[2]

Your complaint suggests that important governmental issues of keen interest to the public were likely discussed at closed meetings of the Consolidation Committee. This may be so, but because the Committee was not a public body, the Act did not apply to its meetings. Therefore, the Consolidation Committee did not violate the Act.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney McKeldin
Tyler G. Webb

[2] This provision defines as a public body "any multimember board, commission, or committee appointed by the Governor or chief executive authority of a political subdivision of the State, if the entity includes in its membership at least two individuals not employed by the State or a political subdivision of the State."